Review of International Political Economy 13:5 December 2006: 725–749

Neoliberalism and multilevel governance

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ABSTRACT

This article examines and theorizes neoliberal ideas related to the scale aspects of multilevel governance. It argues that neoliberalism contains a self-conscious normative project for multilevel governance which is consistent across the federal, regional and global levels. It further argues that the underlying logic of this project can be usefully theorized through various critical understandings of the separation of the economic and the political in neoliberalism and, in particular, through Stephen Gill's concept of new constitutionalism. To demonstrate these points, the article draws on the normative work of neoliberal organic intellectuals—including Hayek, Friedman, Buchanan and various neoliberal think tanks—on 'market-preserving federalism' and the more recent extrapolation of these ideas to the regional and global levels.

KEYWORDS

Neoliberalism; multilevel governance; political economies of scale; new constitutionalism; market-preserving federalism.

INTRODUCTION

The term multilevel governance emerged in the context of European integration studies to describe the growing diffusion of power away from national governments; both upwards to the regional level of the European Union and downwards to the sub-national level of provincial, state and municipal governments.[1] More recently, it has been adopted by political economists and critical geographers working on various aspects of federal, regional and global governance based on their identification of a similar trend towards the diffusion of power away from national governments, but in contexts *outside* of the European Union. In other words, multilevel governance has come to be seen as a much broader trend, one which includes the

Review of International Political Economy
ISSN 0969-2290 print/ISSN 1466-4526 online © 2006 Taylor & Francis
http://www.tandf.co.uk
DOI: 10.1080/09692290600950621

upward diffusion of power to regional and international organizations as well as the downward diffusion of power to various sub-national governments. Moreover, depending on the specific literature involved, this trend has also been described as 'multi-tiered governance', 'polycentric governance', 'glocalization', 'fragmegration', 'rescaling' and the 'relativization of scale'.[2]

As this trend has grown, it has given rise to a number of both positive and normative research questions. In positive terms, the various literatures on multilevel governance have been concerned with questions such as: Why is political authority becoming more vertically diffused away from national governments?; What are the social and political implications of this trend?; and How can we explain the political economies of scale or scalar policies advocated by different social forces? In normative terms, the key research question associated with multilevel governance is: What policy capabilities *should* be assigned to which actors at what levels and why? However, despite their focus on similar questions and the increasing cross-pollination of ideas, the various literatures on federal, regional and global governance are only very slowly beginning to merge into a more unified body of theory related to multilevel governance or the political economies of scale. This is particularly the case when it comes to the struggle between neoliberal and progressive social forces over the question of which policy capabilities should be assigned to which levels of governance. Specifically, while the different literatures have identified competing ideas and interests at each of these separate levels of governance—federal, regional and global—there have been few attempts to determine if the competition over scale between neoliberal and progressive social forces might be consistent across *all* of these levels. In other words, no study has sought to determine if there exists any explicit and self-conscious normative projects for multilevel governance *as a whole* which are consistent across the federal, regional and global levels

One partial exception here comes from the work of regulation school theorists and critical human geographers who have done an excellent job in explaining the vertical diffusion of power away from national governments as an outcome of the broader shift to neoliberalism (Brenner, 1999; Jessop, 2000; Swyngedouw, 1997). However, what remains somewhat under-explored in this body of work is the issue of agency and the extent to which the diffusion of power away from national governments represents a deliberate political project rather than simply an unintentional side-effect of neoliberal policies and political action. Therefore, reflecting these gaps in the literature, the purpose of this article is to examine and theorize neoliberal ideas related to multilevel governance. In doing so, it makes three main arguments.

The first argument is that neoliberalism does, in fact, contain an *explicit and self-conscious* normative project for multilevel governance which

is fully consistent across the federal, regional and global levels. This project is shown to be evident in the normative work of neoliberal organic intellectuals—including Friedrick von Hayek, Milton Friedman, James Buchanan and various neoliberal think tanks—on 'market-preserving federalism' and the more recent extrapolation of these ideas to the regional and global levels. In all cases, the aim of market-preserving federalism (or regionalism or globalism) is to promote constraints on government intervention by locking-in inter-jurisdictional competition. This is achieved either by 'bringing the economy up' through greater capital mobility and the centralization of 'market-enabling' policy competencies or by 'pushing the polity down' through the decentralization of 'market-inhibiting' policy competencies.[3]

The second argument made in this article is that the underlying logic of the neoliberal project for multilevel governance can be usefully theorized through various critical understandings of the separation of the 'economic' and the 'political' in neoliberalism and, in particular, through Stephen Gill's concept of 'new constitutionalism' (1995). For Gill, new constitutionalism refers to the way that the neoliberal project seeks to separate economics from politics through the growing use of legal-juridical mechanisms designed to 'lock-in' neoliberal policies and thus insulate them from democratic influence. In a similar fashion, this article argues that the neoliberal project for multilevel governance can be understood as a distinct subset of new constitutionalist initiatives insofar as it seeks, through legal-juridical mechanisms and inter-governmental bargaining, to separate the economic and the political across a uniquely vertical axis.

The third and final argument made is that, when we recognize that neoliberalism contains an explicit and self-conscious project for multilevel governance, it can provide us with a model for explaining the policies advocated by neoliberal and social democratic social forces on a wide variety of issues related to federal, regional and global governance. In other words, it leads us to expects that while neoliberals will seek to separate the 'economy' and the 'polity' across different levels of governance, social democrats will promote their reintegration in order to limit the disciplinary effects of inter-jurisdictional competition. In the latter case, this can be done either by 'bringing the economy back down' to the level of market-inhibiting policy competencies or by 'bringing the polity up' to the level of capital mobility. Understanding this struggle over multilevel governance as a whole is suggested to be important in that it may help to highlight the agency involved in the contemporary diffusion of power away from national governments. However, before proceeding to these arguments, the next two sections lay the necessary theoretical groundwork through a discussion of the separation of the economic and the political in liberalism and neoliberalism.

THE SEPARATION OF THE ECONOMIC AND THE POLITICAL IN LIBERALISM

For critical political economists, classical economic liberalism and the capitalist relations of production it gives rise to are characterized by the separation of the economic and the political. As Stephen Gill and David Law observe, '[Adam] Smith opened the way towards a separation of "politics" and "economics" by highlighting the apparently spontaneous coordination of economic activity which might be achieved through the market mechanism, as if by an invisible hand . . . After Smith, David Ricardo further developed this method of abstract theorising in a way that separated the "economy" and the "polity"' (1988: 5–6). Specifically, by focusing on the seemingly 'free' and 'voluntary' interaction between rational and self-interested individuals in the marketplace, the classical liberals theoretically separated the economic and the political by viewing free markets as allocating resources in a 'non-authoritative' manner.[4] Put simply, they did not see any politics or relations of power inherent to the production process. At the same time, by emphasizing the market's natural and self-regulating nature, Smith and Ricardo built a strong normative case for the practical separation of politics and economics by relegating the state to a strictly 'nightwatchman' role.

Karl Marx was among the first to criticize both the theoretical and practical separation of politics and economics in classical liberalism. He did so by emphasizing the social relations of production (or class conflict) which he believed was inherent in the production process. Thus, rather than viewing the marketplace as being based on the free and voluntary interaction between equal individuals, Marx argued that the capitalist market privileges the interests of capital over labour. In this sense, production and exchange could not simply be viewed as occurring in a non-authoritative and depoliticized manner. As Gill and Law note, '[i]n Marx's approach, it is, in the last analysis, impossible to separate politics, economics and society' (1988: 6). In theoretical terms, therefore, Marx believed that classical liberalism artificially separated politics and economics by viewing production and exchange as occurring in a differentiated economic sphere by solely economic means, one where worker participation is compelled solely by economic need and not by any form of state coercion. Summarizing the liberal view, Ellen Wood notes that:

> The differentiation of the economic sphere in capitalism, then, can be summed up as follows: the social functions of production and distribution, surplus extraction and appropriation, and the allocation of social labour are, so to speak, privatized and they are achieved by 'non-authoritative', non-political means. In other words, the social allocation of resources and labour does not, on the whole, take place by

> means of political direction, communal deliberation, hereditary duty, custom or religious obligation, but rather through the mechanisms of commodity exchange. The power of surplus appropriation and exploitation do not rest directly on relations of juridical or political dependence but are based on a contractual relation between the 'free' producers—juridically free and free from the means of production—and an appropriator who has absolute private property in the means of production. (1981: 81)

This latter point is particularly important in the way that it highlights the practical, as well as theoretical, separation of politics and economics in liberal capitalism. As Wood points out, '[t]he differentiation of the "economic" and the "political" is, of course, not simply a theoretical but a practical problem . . . capitalist appropriation and exploitation actually do divide the arenas of economic and political action, and actually do transform certain essential political issues—struggles over domination and exploitation that historically have been inextricably bound up with political power—into distinctively "economic" issues' (1981: 67). What this means is that, under liberal capitalism, the 'economic' sphere, rather than emerging in a natural and inevitable manner, is deliberately separated from the 'political' sphere by the state. The state does this by securing property rights and by providing the underlying coercive power that sustains the market system. With the market system thus in place, economic need rather than direct state coercion serves to compel workers to enter into market relationships, relationships which are inherently unequal owing to the structural advantage of capital over labour. Under liberal capitalism, therefore, market relationships appear to be non-authoritative because capital does not directly wield the instruments of coercion over labour. Instead, this is done by the state in a moment which is decisively distanced from the moment of appropriation. In this sense, economic liberalism separates the economic and the political in practical terms through the distancation created between the moments of coercion and appropriation. It does so in theoretical terms by viewing market relationships in isolation from the constitutive role played by the state and its coercive power. As Wood argues, while liberal economists 'may recognize that certain legal and political forms facilitate production, they do not treat them as organic constituents of a productive system' (1981: 69).

Reinforcing Marx's points on the separation of politics and economics in capitalism are the arguments presented in Karl Polanyi's *The Great Transformation*. As John Ruggie notes, Polanyi 'developed a distinction between "embedded" and "disembedded" economic orders' (1982: 385). Embedded orders, for Polanyi, are those in which politics and economics are more integrated in that the market is constructed as a means to an end rather than as an end in itself. 'Normally' he notes 'the economic order is

merely a function of the social, in which it is contained' (1944: 71). In contrast, disembedded orders—of which free market capitalism is the main example—separate politics and economics by subordinating the former to the latter. As Polanyi observes, a self-regulating market 'means no less than the running of a society as an adjunct to the market. Instead of economy being embedded in social relations, social relations are embedded in the economic system' (1944: 57).

To illustrate this point more concretely, and to demonstrate why the separation of politics and economics inherent in the nineteenth century self-regulating market was unsustainable, Polanyi developed the notion of 'fictitious commodities'. For a self-regulating market to work efficiently, business had to have guaranteed access to the inputs of production. This meant that land, labour and capital had to be made 'for sale' through the creation of markets governed by the price mechanism and the laws of supply and demand. The problem, according to Polanyi, was that land, labour and capital were 'fictitious commodities' in that they were inputs of production rather than products produced for sale. As a result, he argued, the supply and demand price mechanism could not be applied to them in quite the same way. As Polanyi argues: 'To allow the market mechanism to be the sole director of the fate of human beings and their natural environment, indeed, even the amount and use of purchasing power, would result in the demolition of society' (1944: 76).

To understand this point, consider a brief example. If the demand for apples is less than the supply, the market will clear when the producer allows the price of apples to fall. For the classical liberals, the same logic could be applied to the inputs of production. In the case of labour, if unemployment was high, the solution was for the price of labour (in the form of wages and benefits) to fall to the point where employers would once again be able to hire them. However, by separating the political from the economic, the classical liberals ignored the fact that, unlike apples, people will not sit quietly by as their wages and benefits are cut. Instead, they will demand measures of social self-protection through market-inhibiting forms of government intervention. Governments, in turn, are forced to respond to these demands lest they face political instability ranging from strikes to electoral pressures and, potentially, to violence. Measures of social self-protection, such as minimum wage policies and social welfare programs, then serve to undermine the 'natural' working of the self-regulating market by creating 'labour market rigidities' which prevent wages from adjusting to a fall in demand. This, in turn, means that the problem of high unemployment can fail to automatically self-correct as economic liberals predict.

The separation of politics and economics associated with the commodification of land, labour and capital might work fine in theory. But in reality, natural resources, people and purchasing power simply do not behave in the passive manner assumed by liberal theory. As a result,

Polanyi believed that the self-regulating market's structural separation of politics and economics would create dislocations for both labour and capital and that each would demand measures of social self-protection through government intervention; a process which he termed the 'double movement'. For Polanyi, this is the key reason why the nineteenth century self-regulating market was politically unsustainable. Moreover, it was this government intervention which he believed created the need for more deliberate and specific institutional mechanisms to separate economics from politics.

One key example of this type of institutional lock-in mechanism, identified by Polanyi, was the Gold Standard system of fixed exchange rates. In the early days of the nineteenth century self-regulating market, capital was much more fully commodified through the existence of private issuers of money. This commodified money, however, led to dislocations for merchants and financiers through intense volatility in purchasing power as the value of monies rose and fell on the waves of supply and demand. In response, the merchants and financiers demanded measures of self-protection through the creation of national central banks and a public monopoly over the money supply. While this helped to deal with the volatility of purchasing power, it also helped to integrate politics and economics in the monetary realm. To overcome this problem and thus protect financiers and merchants from currency manipulation by the state, the Gold Standard system of fixed exchange rates was adopted to re-separate politics and economics in the monetary realm. As the concept of the Mundell-Fleming thesis or 'impossible trinity' reminds us, the combination of capital mobility and fixed exchange rates had the effect of locking-in a deflationary bias in monetary affairs.

One problem with the Gold Standard, however, was that it amplified the commodification of labour by ensuring that the burden of adjustment to negative economic shocks would be primarily borne by labour as currency volatility for elites was replaced with wage volatility for workers. As Polanyi notes: 'In human terms, such a postulate implied for the worker extreme instability of earnings, utter absence of professional standards, complete dependence on the whims of the market' (1944: 176). Thus, in a similar fashion to the merchants and financiers, workers also demanded measures of self-protection through government intervention. To facilitate this in the British context, they first demanded the right to vote under the auspices of the Chartist movement. But as with the creation of central banks and national monies, the potential emergence of democracy created a need for more deliberate institutional mechanisms to re-separate economics from politics. As Polanyi observes: 'When the Chartist Movement demanded entrance for the disinherited into the precincts of the state, the separation of economics and politics ceased to be an academic issue and became the irrefragable condition of the existing system of society' (1944: 225).

As was the case with the Gold Standard, institutional mechanisms were designed to entrench property rights in the rule of law in order to insulate economic policy from popular influence. Significant here was the creation of the American constitution under conditions of intensified democratic pressures. 'Under these conditions' Polanyi writes 'constitutionalism gained an entirely new meaning. Until then constitutional safeguards against unlawful interference with the rights of property were directed only against arbitrary acts from above' (1944: 225). In other words, prior to the American constitution, constitutional provisions for the protection of property were designed to protect merchants from monarchs. In the American constitution, however, the legal separation of politics and economics was directed at democratic forces which might seek to interfere with property rights from below. As Polanyi notes: 'The American constitution . . . isolated the economic sphere entirely from the jurisdiction of the Constitution, put private property thereby under the highest conceivable protection, and created the only legally grounded market society in the world. In spite of universal suffrage, American voters were powerless against owners' (1944: 225–6). While Polanyi seems to overstate the case, both in terms of intention and impact, he does usefully highlight the way that constitutionalism became a key institutional lock-in mechanism for separating politics and economics and, thus, for insulating economic policy from popular forces.

THE SEPARATION OF THE ECONOMIC AND THE POLITICAL IN NEOLIBERALISM

This need for institutional lock-in mechanisms to separate the economic and the political under conditions of democracy forms the basis for Gill's analysis of the contemporary neoliberal project and its efforts to re-intensify the commodification of land, labour and capital. Specifically, through the return to capital mobility and the liberalization of economic policy inherent in contemporary economic globalization, proponents of neoliberalism have sought to create a disembedded economic order reminiscent of the nineteenth century self-regulating market. But as in the nineteenth century, Gill sees increasing commodification today as producing similar dislocations which create the potential for a second double movement away from economic liberalism. To prevent such a development from occurring, Gill argues that the contemporary neoliberal project has also sought to promote various institutional lock-in mechanisms to insulate economic policy from democratic influence; a process which he terms the 'new constitutionalism' (1995, 1998). Thus, for Gill, '[t]he aim of new constitutionalism is to allow dominant economic forces to be increasingly insulated from democratic rule and popular accountability. Indeed, in neoliberal discourse . . . private forms of power and authority are only fully

stabilised when questions of economic rule . . . are removed from politics' (1998: 23).

In making his argument, Gill identifies a number of specific institutional lock-in mechanisms which have been promoted by contemporary neoliberals. First and foremost is the return of international capital mobility and the disciplinary effect which it has on states. As Gill notes: 'What is new, then, about the present situation is that capital mobility has re-emerged in ways that force states to provide price and exchange rate stability [and other neoliberal policies] . . . in order to be credible in the eyes of investors' (1998: 25). The well-known logic here is that capital mobility (through liberalized financial markets and free trade) forces states to compete for transnationally mobile capital by providing the types of neoliberal policies that investors and corporations demand. Moreover, while Gill views capital mobility as helping to lock-in a neoliberal policy bias at the domestic level, he argues that neoliberals have also sought to lock-in capital mobility itself. This has been done through measures such as the International Monetary Fund making capital market liberalization a condition of both membership and loans as well as international trade agreements such as the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA), both of which lock-in the mobility of transnational direct investment.

Other examples of new constitutionalist lock-in mechanisms are the intellectual and investor property rights provisions contained within various trade agreements. The agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) within the WTO and Chapter 11 of the NAFTA are just two examples where provisions have been created to allow for investor-to-state lawsuits in cases where firms feel that government policies have infringed on their property rights. At the more domestic level, Gill points to additional lock-in mechanisms such as balanced budget amendments, referendum requirements for tax increases, independent central banks and fixed exchange rate regimes, all of which work to further lock-in a neoliberal policy bias in macroeconomic policy. In terms of social forces, Gill argues that the 'new constitutionalism operates in practice to confer privileged rights of citizenship and representation to corporate capital and large investors. What is being attempted is the creation of a political economy and social order where public policy is premised upon the dominance of the investor, and reinforcing the protection of his or her property rights. The mobile investor becomes the sovereign political subject' (1998: 23).

In addition to its practical implications, what is interesting about Gill's discussion of new constitutionalism is his demonstration that it represents a deliberate and self-conscious element of the broader neoliberal project. To make this point, Gill draws on the work of neoliberal organic intellectuals (and Nobel prize winners) such as Friedrich von Hayek, Milton Friedman and James Buchanan as well as on the World Bank's *World Development*

Report 1997. In the former case, he cites the importance which these thinkers attach to both capital mobility and institutional lock-in mechanisms for preserving the small government and near-absolute property rights which they associate with economic and social freedom. As Gill notes, 'Hayek singled out exchange controls as particularly oppressive for individual freedom. As Friedman put it in *Capitalism and Freedom*, exchange controls are "the most effective way to convert a market economy into an authoritarian economic society"' (1998: 24). This is the case as exchange controls limit the 'exit' options of capital and thus prevent capital mobility from exercising a disciplinary effect on governments. In terms of institutional lock-in mechanisms for preserving property rights, Gill notes that these 'neoliberals argue for the redefinition of the political to construct a "protected domain" to secure individual freedom against encroachments of the power of the state and pressures of the 'tyranny of the majority' in democratic systems' (2002: 52). Cited specifically here is Hayek's laudatory work on the entrenchment of property rights in the American constitution as well as James Buchanan's more recent work on 'constitutional economics' with its advocacy of 'fiscal and monetary constitutions' (ibid). As Gill argues, 'what is crucial for neoliberals is the strong protection of liberty and property rights, with particular emphasis on the power of the state to protect capital from expropriation and seizure' (ibid: 56).

Thus, for Gill, the explicit desire of Hayek, Friedman and Buchanan to separate politics and economics through capital mobility and institutional lock-in mechanisms helps to highlight the self-conscious underpinnings of contemporary new constitutionalism. To further demonstrate this point, he cites the similar and similarly self-conscious arguments put forth in the World Bank's *World Development Report 1997*. As Gill reports, 'much attention is given in the report to "locking in good policies"' through the disciplinary effects of capital mobility as well as through various institutional 'mechanisms of restraint' (Gill, 1998: 34). The purpose of such restraints, according to the World Bank, is to ensure that the neoliberal policy commitments of governments are credible in the eyes of investors (World Bank, 1997: 99). For Gill, then, these "'mechanisms of restraint" in macroeconomic policy involve the clear separation of the economic and the political in ways that lessen the possibility for democratic accountability' (1998: 35).

Based on these arguments, Gill has demonstrated that the concept of new constitutionalism is a valuable tool for theorising a central and self-conscious element of the contemporary neoliberal project. However, one aspect of new constitutionalism which is under-explored in Gill's work is its more scalar aspects. As will be argued later, these aspects are important in that they point to an equally self-conscious strategy associated with the contemporary neoliberal project, one that is uniquely directed towards the issue of multilevel governance.

NEOLIBERALISM AND 'MARKET-PRESERVING FEDERALISM'

The argument outlined over the next two sections is that neoliberalism contains an explicit and self-conscious normative project for multilevel governance which is consistent across the federal, regional and global levels. The origins of this project are found in the work of neoliberal organic intellectuals on 'competitive federalism' and 'market-preserving federalism'. Moreover, as with new constitutionalism more generally, ideas on market-preserving federalism use the American constitutional model as their starting point. The World Bank's *World Development Report 1997*, for example, describes the horizontal and vertical separation of powers in the American constitution as 'the classic constitutional mechanism' (1997: 49). The horizontal aspect refers to the separation of powers between the executive, legislature and judiciary, while the vertical aspect refers to centralization/decentralization and federalism. In both cases, the separation of powers in the American constitution reflects James Madison's assertion in the *Federalist Papers* (No 51) that 'ambition must be made to counteract ambition' (cited in Aranson, 1990). Therefore, as with constitutionalism more generally, federalism was seen by the American founding fathers as a further institutional lock-in mechanism for limiting the arbitrary powers of government.

Competitive or market-preserving federalism, however, goes a step further by advocating a specific *type* of federalism in terms of which policy capabilities should be assigned to which levels of government. It does so starting from the neoliberal assumption that governments are monopolistic rent seekers whose capacity for intervention should be limited through the discipline of market forces. To achieve this market discipline within the context of one country, Hayek advocates a type of federalism where sub-national governments compete for mobile citizens and firms within the context of a national economy. As Hayek notes in *The Constitution of Liberty*:

> The reason why a division of powers between different authorities always reduces the power that anybody can exercise is not always well understood. It is not merely that the separate authorities will, through mutual jealousy, prevent one another from exceeding their authority. More important is the fact that certain types of coercion require the joint and coordinated use of different powers or the employment of several means, and, if these means are in separate hands, nobody can exercise those types of coercion. The most familiar illustration is provided by many kinds of economic control which can be effective only if the authority exercising them can also control the movement of men and goods across the frontiers of its territory. If it lacks that power, though it has the power to control internal events, it cannot

> pursue policies that require the joint use of both. Federal government is thus in a very definite sense limited government. (1960: 184–5)

While Hayek seems to describe federalism in general, it is clear he is advocating a specific type of federalism premised upon the creation of an 'exit option' for both firms and individuals. For neoliberals, the right to 'exit' a specific political jurisdiction is the primary *self-enforcing* check on government power and it points to two broad principles for the design of market-preserving federal systems. First, sub-national governments should not have the ability to limit the right to exit (or enter) their jurisdictions. This implies the centralization of most 'market-enabling' policy capabilities at the federal level to ensure a national economy characterized by the free movement of individuals, firms and goods. Second, with respect to more 'market-inhibiting' policy capabilities such as labour and environmental regulation and certain forms of tax collection and social spending, neoliberals generally advocate decentralization. The intent here is to prevent national policies on most economic issues and to confine as many of the market-inhibiting tax and regulatory powers as possible to the sub-national level where they will be constrained by the need to compete for mobile citizens and firms.

Advocating this approach, Hayek argues that 'the result would be the transformation of local and even regional governments into quasi-commercial corporations competing for citizens' (1960: 146). Thus, for Hayek, mobility based on the right to exit can create a type of 'market' for government policies where citizens and firms move to those jurisdictions which offer them the most desirable mix of taxes and services. One implication of this, he believes, is that: 'Not only would the greater mobility between the states make it necessary to avoid all sorts of taxation that would drive capital or labour elsewhere, but there would also be considerable difficulties with many kinds of indirect taxation' (1939: 270). In a similar fashion, Hayek believes that excessive government intervention in the economy would become 'altogether impracticable under a federal organization' owing to the ability of firms to move to other jurisdictions (1939: 270). In this sense, Hayek views an 'economically centralized' and 'politically decentralized' form of federalism as a type of institutional lock-in mechanism that can help to preserve free markets by limiting market-inhibiting forms of government intervention.

A similar argument in favour of political decentralization is made by Milton Friedman in his seminal *Capitalism and Freedom*:

> If government is to exercise power, better in the county than in the state, better in the state than in Washington. If I do not like what my local community does, be it in sewage disposal, or zoning, or schools, I can move to another local community, and though few make take this step, the mere possibility acts as a check. If

> I do not like what my state does, I can move to another. If I do not like what Washington imposes, I have few alternatives in this world of jealous nations . . . The preservation of freedom is the protective reason for limiting and decentralizing government power. (1962: 3)

Thus, as with Hayek, Friedman highlights the importance of political decentralization within a national economy and the need for an exit option to act as a check on government intervention. More recently, Barry Weingast (1995) has sought to formalize this neoliberal approach to federalism by developing the notion of 'market-preserving federalism'. Specifically, Weingast views federal systems as having two main characteristics: '(F1) a *hierarchy* of governments, that is, at least "two levels of government rule the same land and people", each with a *delineated scope of authority* so that each level of government is autonomous in its own, well-defined sphere of political authority; and (F2) the *autonomy* of each government is institutionalized in a manner that makes federalism's restrictions self-enforcing' (1995: 4). In addition to these general characteristics, Weingast argues that '[a] federal system is market-preserving if it ha[s] three additional characteristics: (F3) subnational governments have primary regulatory *responsibility over the economy*; (F4) a *common market* is ensured, preventing the lower governments from using their regulatory authority to erect trade barriers against the goods and services from other political units; and (F5) the lower governments face a *hard budget constraint*, that is, they have neither the ability to print money nor access to unlimited credit. This condition is not met if the central government bails out the lower one whenever the latter faces fiscal problems' (1995: 4).[5]

Emphasized is Weingast's version, therefore, is capital rather than labour mobility and the need to have the private economy operate at a level above that of market-inhibiting forms of regulation. Thus, with the mobility of capital being the focus, the primary check provided by federalism's exit option is on the ability of governments to implement market-inhibiting policies which negatively affect the interests of capital. As Weingast notes, 'Thriving markets require not only the appropriate system of property rights and a law of contracts, but a secure political foundation that limits the ability of the state to confiscate wealth' (1995: 1). What this illustrates is that Weingast's market-preserving federalism *self-consciously* seeks to separate the 'economic' and the 'political' across a vertical axis to lock-in a neoliberal policy bias.

Beyond Weingast, one of the strongest and most explicitly normative arguments in favour of market-preserving federalism (what he calls 'competitive federalism') comes from the Nobel laureate, James Buchanan. In his 1995 article on 'Federalism As an Ideal Political Order and an Objective for Constitutional Reform', Buchanan builds on his earlier work on

constitutional economics and the need for institutional lock-in mechanisms to preserve property rights and markets. In doing so, he incorporates the separation of politics and economics evident in both liberalism and neoliberalism. For example, in the former case, Buchanan argues in favour of constitutional protections for property rights and free markets based on his belief that the market, unlike the political process, is free from economic coercion and exploitation. 'The categorical difference between market and political interaction' he argues 'lies in the continuing presence of an effective exit option in market relationships and in its absence in politics. To the extent that the individual participant in market exchange has available effective alternatives that may be chosen at relatively low cost, any exchange is necessarily voluntary. In its stylized form, the market involves no coercion, no extraction of value from any participant without consent' (1995: 20). From this perspective, therefore, constitutional limits on government intervention are seen as necessary to promote a society that is free from coercion and exploitation.

For Buchanan, however, constitutional provisions may not be enough. 'Enforceable constitutional restrictions' he argues 'may constrain the domain of politics to some extent, but these restrictions may not offer sufficient protection against the exploitation of citizens through the agencies of governance' (1995: 20). To solve this problem, he favours a political system that incorporates the *self-enforcing* principles of the market, particularly the principle of maintaining an exit option through the construction of a federal system. As Buchanan notes:

> The principle of federalism emerges directly from the market analogy. The politicized sphere of activity, in itself, may be arranged or organized so as to allow for the workings of competition, which is the flip side of the availability of exit, to become operative. The domain of authority for the central government, which we assume here is coincident in territory and membership with the economic exchange nexus, may be severely limited, while remaining political authority is residually assigned to the several 'state' units, each of which is smaller in territory and membership than the economy. Under such a federalized political structure, persons, singly and/or in groups, would be guaranteed the liberties of trade, investment, and migration across the inclusive area of the economy. Analogously to the market, persons retain an exit option. (1995: 21)

Buchanan's point about the necessity of federalism as a self-enforcing back-up to constitutional provisions is a significant one. It serves to emphasize the importance of a scalar and distinctly multilevel element within the broader new constitutionalist and neoliberal project.

This scalar element of the broader new constitutionalist project has recently been promoted by the American Enterprise Institute (AEI), one of

the most influential neoliberal think tanks in the United States. In 2000, the Institute set up its Federalism Project which 'conducts and sponsors original research on American federalism, with particular emphasis on federal and state business regulation, legal developments and the role of the courts, and the prospects for rehabilitating a constitutional federalism that puts states in competition for productive citizens and businesses' (AEI, 2000). The Project publishes various books and commentaries, runs a website and holds numerous conferences attended by business and political leaders. Its explicit aim is to promote a 'competitive federalism' which, in the view of project director Michael Greve, 'does not seek to empower states; rather, it seeks to discipline governments by forcing them to compete for citizens' business' (Greve, 2000). The AEI project is thus fully consistent with the market-preserving federalism advocated by Hayek, Weingast and Buchanan and it helps to highlight the overall coherence of neoliberal thought in this area. Further demonstrating this coherence is the fact that the AEI has also sought to make links between market-preserving federalism and the need to preserve an exit option for capital at both the regional and global levels (Rabkin, 2000, 2004). As Greve observes: 'The benefits of jurisdictional choice and competition are visible at all levels of government . . . At the international level, the free flow of capital (and to some extent labour) has rewarded America's comparatively freewheeling economy, while punishing countries whose governments insist on pursuing collectivist experiments' (2000).

MARKET-PRESERVING REGIONALISM AND GLOBALISM

At this point, we should already be able to discern a number of clear similarities between market-preserving federalism and the neoliberal scalar project as it relates to regionalism and globalism. In both cases, the neoliberal projects for regionalism and globalism are consistent with Weingast's key criteria for market-preserving federalism. Most important here is the criterion that: '(F4) a *common market* is ensured, preventing the lower governments from using their regulatory authority to erect trade barriers against the goods and services from other political units' (1995: 4). In practical terms, this implies either a *de facto* or *de jure* centralization of those policy capabilities related to the promotion of free markets, capital mobility and property rights. As Buchanan argues, 'the central or federal government would be constitutionally restricted in its domain of action, severely so. Within its assigned sphere, however, the central government would be strong, sufficiently so to allow it to enforce economic freedom or openness over the whole of the territory. The separate states would be prevented, by federal authority, from placing barriers on the free flow of resources and goods across their borders' (1995: 21). At the regional and

global levels, neoliberals have promoted such a centralization of market-promoting policy competencies through the various enforcement powers granted to the IMF and the World Bank as well as through those provided for in the Single European Act, the NAFTA and the WTO. At both the regional and global levels, therefore, few would disagree that the neoliberal project advocates capital mobility and the international protection of property rights. It does so based on the same logic as that of market-preserving federalism; to create an exit option that forces different political jurisdictions to compete for investment in a way that will discipline governments and constrain their options for pursuing market-inhibiting forms of intervention. As Buchanan argues, 'the relationship between federalism, as an organizing principle for political structure, and the freedom of trade across political boundaries must be noted. An inclusive political territory, say, the United States or Western Europe, necessarily places limits on its own ability to interfere politically with its own internal market structure to the extent that this structure is, itself, opened up to the free workings of international trade, including the movement of capital' (1995: 27).

Beyond the clear case of capital mobility and the exit option, the neoliberal scalar project for regionalism and globalism is also consistent with Weingast's second key criterion for market-preserving federalism. This is the requirement that '(F3) subnational governments have primary regulatory *responsibility over the economy*' (1995: 4). In practical terms, this implies the decentralization of those policy capabilities which can be viewed as market-inhibiting such as certain tax, labour and environmental policies. At the regional and global levels, this implies more than simply avoiding the creation of supranational institutions with market-inhibiting policy capabilities. It also requires that governments avoid entering into multilateral agreements which would aim to increase tax and regulatory burdens through cross-national harmonization. Such harmonization would effectively reduce the disciplinary effect of the exit option by creating a tax or regulatory 'floor' below which no country would be allowed to go. It is for this reason that neoliberals have opposed the centralization of market-inhibiting policy competencies in supranational institutions as well as any efforts to increase tax and regulatory burdens through multilateral harmonization.

Making this point in the case of European regionalism, Buchanan has argued that:

> The opportunity has existed, and still exists, to organize European politics so as to put in place a genuine federal structure with many elements of the ideal set out earlier. The Europe-wide economy has been substantially integrated, with historically unprecedented liberties of resources flows and trade across traditional national boundaries.

> Reform requires the establishment of a strong but limited central authority, empowered to enforce the openness of the economy, along with other minimal state functions. In this way, and only in this way, can the vulnerability of the individual European to exploitation by national political units be reduced. At the same time, however, the extension of the central authority's powers beyond such minimal limits must be rigidly opposed. The separated nation-states, as members of the federal union, must zealously protect the whole range of subminimal political activities. (1995/1996)

This need to 'rigidly oppose' any centralization of market-inhibiting policy competencies has, in fact, been vigorously promoted by a number of European neoliberals, particularly through the notion of 'subsidiarity'. Prominent here is the Bruges Group, an elite British think tank created in 1989 with the express aim of promoting 'the idea of a less centralized European structure than that emerging in Brussels' (Bruges Group website). The Group was inspired by a 1988 speech given by former Prime Minister Margaret Thatcher in Bruges, Belgium. Her speech was in response to European Commission president Jacques Delors' stated commitment to build a 'social Europe', a commitment which later manifested itself in the proposal for a European Social Charter. In her speech, Thatcher famously argued that: 'We have not successfully rolled back the frontiers of the state in Britain, only to see them re-imposed at the European level' (Thatcher, 1988).

In contrast to Buchanan, however, the Bruges Group advocates a *de facto* rather than *de jure* form of federalism for Europe, something more akin to the NAFTA. Nonetheless, it is a vision which is consistent with the key principles of market-preserving federalism. This is evident in the vision for Europe laid out by Thatcher in her speech and which continues to form the basis for the Bruges Group's regional project. Most important here is the need to entrench capital mobility and to avoid any centralization or upward harmonization of market-inhibiting policy competencies. As Thatcher proposed: 'Our aim should not be more and more detailed regulation from the centre: it should be to deregulate and to remove the constraints on trade' (Thatcher, 1988). Further demonstrating the consistency of neoliberal thinking on regionalism, the AEI Federalism Project has also weighed in on the question of European integration. In doing so, Greve derides the increasing centralization of market-inhibiting policy capabilities by noting that 'the [European] project explicitly rejects a "mere" common market, which embodies libertarian or, as the Europeans sneer, "neoliberal" values of competition, choice, and mobility' (Greve, 2002). More specifically, Greve opposes the regulatory harmonization taking place in the European Union because it removes the disciplinary effects of jurisdictional competition.

Turning to the more global level, the AEI Federalism Project has made similar arguments for political decentralization and the need to avoid multilateral harmonization. In doing so, the AEI's discourse, like that of other neoliberals, takes on a decidedly nationalist character. While fully internationalist when it comes to capital mobility and market-enabling policy capabilities, the AEI becomes a staunch defender of national sovereignty in the face of international agreements seeking to achieve an upward harmonization in market-inhibiting tax and regulatory policies. The AEI Federalism Project, for example, has published two books by Jeremy Rabkin titled *Why Sovereignty Matters* and *The Case For Sovereignty* (Rabkin 2000, 2004). Drawing on the key principles of market-preserving federalism, both books make a detailed case against regional and global forms of multilateral harmonization. In the case of the Kyoto Protocol, for example, Rabkin argues that: 'It is, by almost every criterion, a disturbing challenge to constitutional limitations on the treaty power' (2000: 80). In contrast, 'the trading system is fundamentally compatible with traditional notions of sovereignty' (ibid: 86). It is for this reason that the AEI and other neoliberals have supported international agreements and institutions which centralize market-enabling policy capabilities, particularly those that work to lock-in capital mobility and the cross-border protection of property rights. It is also the reason that they have staunchly opposed any centralization of market-inhibiting policy capabilities or attempts at multilateral regulatory harmonization such as the European Social Charter, the labour and environmental side-accords to the NAFTA and, more recently, the Kyoto Protocol.

Among neoliberals, multilateral harmonization has recently become as important a target as anti-globalization precisely because it threatens to disrupt the benefits of market-preserving globalism. Demonstrating this point, AEI fellow Roger Bate argues that:

> . . . there has been a slow and now accelerating push for global governance, and away from the sovereignty of nation-states . . . The global governance institutions that pressure groups, bureaucrats and politicians promote include international treaties on numerous issues such as climate change, chemicals, and tobacco. There are also proposals pushed by powerful and respected international bodies for agreements on labour standards, environmental protection, and tax harmonization. These entail an entirely different form of globalization—one that is beginning to have a significant, and deleterious, effect. (2004)

While neoliberals generally oppose most forms of multilateral regulatory harmonization, they are equally concerned about the potential for multilateral tax harmonization. As Bate notes: 'It's tax harmonization that can lead to the greatest loss of national sovereignty' (2004). This is the case to the extent that neoliberals regard jurisdictional competition as having

been particularly effective in the realm of fiscal policy. The neoliberal Cato Institute, another highly influential American think tank, recently came to this conclusion in a study titled 'International Tax Competition: A 21st-Century Restraint on Government' (Edwards and de Rugy, 2002). As the study notes, '[h]igh tax rates are more difficult to sustain in the new economic environment. That is particularly true for taxes on capital . . . In our view, international tax competition may indeed hamper income redistribution, but that is a beneficial outcome because redistribution has progressed to a remarkably high degree in most industrial countries' (ibid: 2, 3). Tax harmonization, in contrast, would threaten these already obtained benefits of jurisdictional competition. As a result, the study goes on to provide detailed critiques of recent proposals for tax harmonization such as those put forward by the European Parliament (2000) and the OECD (1998).

DISEMBEDDED FEDERALISM: THE NEOLIBERAL APPROACH TO MULTILEVEL GOVERNANCE

This section argues that the underlying logic of the neoliberal project for multilevel governance can be usefully theorized through critical understandings of the separation of the economic and the political and, in particular, through Gill's concept of 'new constitutionalism'. Specifically, in the same way that the World Bank identifies both horizontal and vertical aspects within the constitutional separation of powers, so too can we analytically disaggregate Gill's concept of new constitutionalism. For example, some of the new constitutional lock-in mechanisms identified by Gill—such as balanced budget amendments, independent central banks and intellectual property rights provisions in trade agreements—work to separate the economic and the political in a 'horizontal' fashion in that they do not directly rely on the disciplinary effects of capital mobility and the exit option. In contrast, the lock-in mechanisms connected to market-preserving federalism do rely on capital mobility and the exit option and, thus, can be viewed as working to separate the economic and the political in a more uniquely vertical and self-enforcing fashion.

Viewed in this light, and following Polanyi, the neoliberal project for multilevel governance can be theorized as a self-conscious attempt to promote a form of 'disembedded federalism' where the 'economy' always operates at least one level above that of the 'polity' in order to create an exit option and the disciplinary effects of jurisdictional competition. Important to emphasize here is that this vertical separation of the 'economic' and the 'political' can be achieved across all levels in one of two distinct ways. It can be achieved either by 'bringing the economy up' through greater capital mobility and the centralization of market-enabling policy capabilities or by 'pushing the polity down' through the decentralization of market-inhibiting policy capabilities. In both cases, the aim is to separate

economics from politics across a vertical axis in order to lock-in a neoliberal policy bias among competing jurisdictions. Disembedded federalism thus favours mobile assets over immobile assets in terms of their ability to structurally influence government policy. In practical terms, and to the extent that labour mobility is always more 'sticky' than that of capital, this means that disembedded federalism serves to structurally privilege the interests of capital over labour (and other social activists) by making it more difficult for governments to implement market-inhibiting and redistributive policies.

This latter point is significant as it may form the basis for developing a broader model for understanding the scalar policies advocated by different social forces. Specifically, it provides a starting point for hypothesizing the scalar policies advocated by transnational corporations and investors and the lobby groups and political parties which deem to represent them. For example, while transnational capital interests are generally deemed to be 'pro-globalization', the concept of disembedded federalism may explain why this is not an accurate term. Rather than being 'pro-globalization' (or pro-regionalization), transnational capital interests are hypothesizied to favour those policies which vertically separate the economic and the political (such as capital mobility and political decentralization) and to oppose those policies which seek to re-integrate them (such as economic nationalism or various forms of multilateral harmonization). In fact, this has been the finding of recent studies which, while not spanning the full scope of multilevel governance, do confirm the existence of a coherent approach on the part of transnational capital interests. In the case of globalism, for example, David Levy and Aseem Prakash have argued that multinational corporations 'tend to support the creation of market enabling regimes at the international level, and prefer to keep social or environmental regulation under national or private authority' (Levy and Prakash, 2003: 131). In the case of regionalism, Hooghe and Marks (1997, 2001) as well as Apeldoorn (2002) have developed similar models applied to the case of European integration. What the concept of disembedded federalism adds to these models is a broader explanation for the political economies of scale advocated by transnational capital interests. It demonstrates that these policy positions stem from a broader and more coherent normative framework which is both explicitly self-conscious and applicable across all levels of multilevel governance. This, in turn, may help to highlight the agency involved in the contemporary diffusion of power away from national governments.

The concept of disembedded federalism may also provide some insights into the scalar policies advocated by 'progressive' social forces. For example, for all the reasons that transnational capital is likely to favour jurisdictional competition, labour and social activist groups are hypothesized as being likely to oppose it. For these groups, disembedded federalism limits the ability of governments to levy the taxes they deem

necessary for funding redistributive social programs as well as the regulations which they believe are required to improve labour, environmental and other social standards. In fact, many progressive social forces decry jurisdictional competition for creating a 'race-to-the-bottom' in terms of these programs and standards (Barlow and Clarke, 2001).[6] It is based on this opposition to capital mobility and jurisdictional competition that many commentators have described these groups as being inherently 'anti-globalization'. Again, however, disembedded federalism may help to explain why 'anti-globalization'—like 'pro-globalization'—is not an accurate term. Rather than being anti-globalization (or anti-regionalization), labour and social activists are likely to favour those policies which work to vertically re-integrate the economic and the political and to oppose those policies which seek to separate them. In other words, where transnational capital will prefer the scalar policies of disembedded federalism, labour and social activists will tend to prefer a form of 'embedded federalism' in which the 'economy' operates at the same level as that of the 'polity'.

In the present context of economic globalization and regionalization, a political project of (re)embedded federalism implies that progressive social forces would advocate policies which seek to realign the 'economic' and 'political' in ways that work to limit jurisdictional competition. Important to note here, however, is that this realignment can occur in one of two distinct ways. The first is by 'bringing the economy back down' to the level of national democratic control through economic nationalism and an end to capital mobility. In practical terms, this implies the re-imposition of capital and exchange controls and a withdrawal from international trade agreements. The second way is by 'bringing the polity up' to the level of the regional or global economy through multilateral harmonization and progressive forms of regional and global governance. (Within states, it implies a re-centralization of market-inhibiting policy capabilities at the national level.) Therefore, where the concept of disembedded federalism may help us to explain why transnational capital interests and social activists advocate different scalar policies, a recognition that there are two paths to a re-embedded federalism may help to explain the differences in the scalar policies advocated among the social activists themselves. Within the global protest movement, for example, 'nationalist' groups tend to favour the 'bringing the economy down' approach while 'reformists' tend to favour the 'bringing the polity up' approach (Green and Griffith, 2002). Thus, while appearing to advocate the fundamentally different programs of economic nationalism vs. progressive global governance, what unites both groups is the desire to have the 'economy' operate at the same level as the 'polity' in order to prevent jurisdictional competition and any subsequent constraints on government policy.

CONCLUSION

This article concludes by identifying two key areas for further research stemming from the concept of disembedded federalism. One area for further research is a detailed empirical investigation of the extent to which specific social forces actually do promote or oppose the specific policies associated with disembedded federalism across all levels of multilevel governance. The aim here would be to build on the models created by Levy and Prakash (2003), Hooghe and Marks (2001) and Apeldoorn (2002) and to test the hypotheses outlined in the previous section. A second area for further research concerns the relationship between neoliberalism and political nationalism and the extent to which neoliberalism actually requires multilevel governance in order to fully realize its objectives. While neoliberalism is generally seen to be internationalist in its orientation, this article has demonstrated that, on the issue of multilateral harmonization and a centralization of market-inhibiting policy capabilities, contemporary neoliberals have employed the discourse of sovereignty in expressing their opposition. Taken as a whole, these areas for further research would attempt, as this article has done, to make a small theoretical contribution to both the multilevel governance and critical political economy literatures.

ACKNOWLEDGEMENTS

I would like to thank Stephen Gill, Robert Young, Tim Di Muzio and two anonymous reviewers for their insightful comments. I would also like to thank the Social Sciences and Humanities Research Council and the University of Western Ontario for their generous funding of various parts of this research.

NOTES

1 See, for example, Scharpf (1994); Hulsemeyer (2000); Hooghe and Marks (2001); Bache and Flinders (2004); Baker *et al.* (2005).

2 For an excellent review of the multilevel governance literature, see Hooghe and Marks (2003).

3 The terms 'market enabling' and 'market inhibiting' policy capabilities are clearly somewhat imprecise given the dual-role of many policies. Following Levy and Prakash (2003), market-enabling policy capabilities are taken to include those policy capabilities whose primary aim is to liberalize and stabilize markets such as internal/external trade policy and monetary policy. In contrast, 'market-inhibiting' policy capabilities include those policy capabilities whose primary aim is to regulate markets such as environmental, labour and social policy as well as to redistribute income and wealth through various forms of fiscal policy. While Levy and Prakash use the term 'regulatory' rather than 'market-inhibiting', the latter term is used to also incorporate fiscal policy.

4 This view of market interactions as voluntary and non-coercive is maintained by neoliberals. See, for example, Friedman (1962: 13) and Buchanan (1995).

5 For a detailed discussion on the role of the hard budget constraint in market-preserving federalism see Rodden and Wibbels (2002).
6 While there is an extensive debate over the extent to which capital mobility constrains government policy, it is beyond the scope of this article. However, the argument suggested here is that the different social forces *believe* that capital mobility constrains government policy and, as a result, it influences their policy preferences.

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